

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- S & R WORLDWIDE, Plaintiff, -v- NEUTRACEUTICAL WELLNESS INC., Defendant. ----- X	X : : : : : : : : : : : 22-cv-9238 (LJL) : : : : <u>MEMORANUDM &</u> <u>ORDER</u>
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LEWIS J. LIMAN, United States District Judge:

The complaint was filed on October 27, 2022. The Court held an initial conference on March 10, 2023. Following the conference, the Court ordered Plaintiff to serve Defendant by April 10, 2023, or to show cause, if Plaintiff has not yet served Defendant by April 10, 2023, why the case should not be dismissed for failure to make timely service of process. Dkt. No. 6.

Rule 4(m) provides that “[i]f a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period. This subdivision (m) does not apply to service in a foreign country under Rule 4(f), 4(h)(2), or 4(j)(1), or to service of a notice under Rule 71.1(d)(3)(A).” Fed. R. Civ. P. 4(m). The complaint alleges that “Defendant is believed to be a foreign company with a registered agent [in New York].” Dkt. No. 1. ¶ 7.

Plaintiff has not filed proof of service. Nor has Plaintiff shown cause for failure to make timely service of process. The Second Circuit has “held inapplicable the foreign country exception to Federal Rule of Civil Procedure 4(m)’s . . . time limit for service where a party did not attempt service within the . . . limit and ‘ha[d] not exactly bent over backward to effect service.’” *DEF v. ABC*, 366 F. App’x 250, 253 (2d Cir. 2010) (quoting *Montalbano v. Easco Hand Tools, Inc.*, 766 F.2d 737, 740 (2d Cir. 1985)). It has now been nearly 10 months after the complaint has been filed with no proof of service and no explanation why Plaintiff has not been able to effect service.

Accordingly, it is hereby ORDERED that this action is DISMISSED without prejudice. The Clerk of Court is respectfully directed to close this case.

SO ORDERED.

Dated: August 18, 2023
New York, New York

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LEWIS J. LIMAN
United States District Judge